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In the Supreme Court of the United States

OCTOBER TERM, 1993

JOHN H. DALTON, SECRETARY OF
THE NAVY, ET AL., PETITIONERS

v.

ARLEN SPECTER, ET AL.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI
FILED AUGUST 23, 1993
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99 pp

In the Supreme Court of the United States
OCTOBER TERM, 1993

No. 93-289

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¹ The following items were printed in the petition appendix and are not reprinted herein: (1) the May 18, 1993, opinion of the court of appeals; (2) the April 17, 1992, opinion of the court of appeals; (3) the November 9, 1992, order of this Court granting certiorari, vacating the April 17, 1992, judgment of the court of appeals, and remanding the case to the court of appeals for further consideration in light of *Franklin v. Massachusetts*, 112 S. Ct. 2767 (1992); (4) the November 1, 1991, memorandum and order of the district court dismissing the complaint; (5) the June 14, 1993, order of the court of appeals denying rehearing; and (6) the May 20, 1992, order of the court of appeals denying rehearing.

U.S. DISTRICT COURT
OF EASTERN PENNSYLVANIA (Philadelphia)

CIVIL DOCKET FOR CASE #: 91-CV-4322

SPECTER, ET AL.

v.

GARRETT, ET AL.

[Filed: 7/8/91]

* * * * *

7/19/91 4 MOTION BY PLAINTIFFS FOR PRELIMINARY INJUNCTION, MEMORANDUM, CERTIFICATE OF SERVICE. (ag)

7/19/91 6 Amended complaint by PLAINTIFF ARLEN SPECTER, PLAINTIFF HARRIS WOFFORD, PLAINTIFF BILL BRADLEY, PLAINTIFF FRANK R. LAUTENBERG, PLAINTIFF ROBERT P. CASEY, PLAINTIFF COMMONWEALTH OF PA., PLAINTIFF ERNEST D. PREATE JR., PLAINTIFF CURT WELDON, PLAINTIFF THOMAS FOGLIETTA, PLAINTIFF ROBERT ANDREWS, PLAINTIFF R. LAWRENCE COUGHLIN, PLAINTIFF CITY OF PHILA, PLAINTIFF HOWARD J. LANDRY, PLAINTIFF

INTERNATIONAL FED, PLAINTIFF
 WILLIAM F. REIL, PLAINTIFF
 METAL TRADES COUNCIL, amending
 [1-1] complaint (ag)

* * * * *

8/19/91 15 MOTION BY DEFENDANTS TO DISMISS, MEMORANDUM, CERTIFICATE OF SERVICE. (ag) [Entry date 08/20/91]

* * * * *

11/1/91 39 MEMORANDUM AND ORDER THAT DEFENDANTS' [15-1] MOTION TO DISMISS IS GRANTED; THE COURT ENTERS JUDGMENT FOR DEFENDANTS AND THE PLAINTIFFS' CLAIMS ARE DISMISSED WITH PREJUDICE. (SIGNED BY JUDGE RONALD L. BUCKWALTER) 11/4/91 ENTERED AND COPIES MAILED. (ag) [Entry date 11/04/91]

11/1/91 - Case closed (kv) [Entry date 11/07/91]

* * * * *

11/4/91 42 Notice of appeal by ALL PLAINTIFFS Copies to: to JUDGE RONALD L. BUCKWALTER, Clerk USCA, Appeals Clerk, and DAVID J. ANDERSON, VINCENT M. GARVEY, MARK W. BATTEN, DAVID H. PITTSKY. (ag) [Entry date 11/05/91]

* * * * *

GENERAL DOCKET FOR
 THIRD CIRCUIT COURT OF APPEALS

Court of Appeals Docket #: 91-1932

SPECTER, ET AL.

v.

GARRETT, ET AL.

[Filed: 11/6/91]

Appeal from Eastern District of Pennsylvania

SEN. ARLEN SPECTER; SEN. HARRIS WOFFORD; SEN. BILL
 BRADLEY; SEN. FRANK R. LAUTENBERG; GOVERNOR
 ROBERT P. CASEY; COMMONWEALTH OF PENNSYLVANIA;
 ERNEST D. PREATE, JR., PENNSYLVANIA ATTORNEY
 GENERAL; REP. CURT WELDON, REP. THOMAS FOGLIETTA;
 REP. ROBERT ANDREWS; REP. R. LAWRENCE
 COUGHLIN; CITY OF PHILADELPHIA; HOWARD J. LANDRY;
 INTERNATIONAL FEDERATION OF PROFESSIONAL AND
 TECHNICAL ENGINEERS, LOCAL 3, WILLIAM F. REIL;
 METAL TRADES COUNCIL, LOCAL 687 MACHINISTS;
 GOVERNOR JAMES J. FLORIO; STATE OF NEW JERSEY;
 ROBERT J. DEL TUFO, NEW JERSEY ATTORNEY GENERAL;
 GOVERNOR MICHAEL N. CASTLE; STATE OF DELAWARE;
 REP. PETER H. KOSTMEYER; REP. ROBERT A. BORSKI,
 RONALD WARRINGTON; PLANNERS ESTIMATORS
 PROGRESSMAN & SCHEDULERS UNION LOCAL NO. 2

v.

SEAN O'KEEFE*, ACTING SECRETARY OF THE NAVY; LES ASPEN*, SECRETARY OF DEFENSE; THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION, AND ITS MEMBERS; JAMES A. COURTER; WILLIAM L. BALL, III; HOWARD H. CALLAWAY; DUANE H. CASSIDY; ARTHUR LEVITT, JR.; JAMES C. SMITH, II; ROBERT D. STUART, JR.

U.S. SEN. ARLEN SPECTER, U.S. SEN. HARRIS WOFFORD, - U.S. SEN. BILL BRADLEY, U.S. SEN. FRANK R. LUTENBERG, GOVERNOR ROBERT P. CASEY, THE COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA ATTORNEY GENERAL ERNEST D. PREATE, JR., GOVERNOR JAMES J. FLORIO, THE STATE OF NEW JERSEY, NEW JERSEY ATTORNEY GENERAL ROBERT J. DEL TUFO, GOVERNOR MICHAEL N. CASTLE, THE STATE OF DELAWARE, U.S. REP. CURT WELDON, U.S. REP. THOMAS FOGLIETTA, U.S. REP. ROBERT E. ANDREWS, U.S. REP. R. LAWRENCE COUGHLIN, U.S. REP. PETER H. KOSTMAYER, U.S. REP. ROBERT A. BORSKI, THE CITY OF PHILADELPHIA, HOWARD J. LANDRY, INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 3, WILLIAM F. REIL, METAL TRADES COUNCIL, LOCAL 687, MACHINISTS, RONALD WARRINGTON, THE PLANNERS ESTIMATORS PROGRESSMAN & SCHEDULERS UNION, LOCAL NO. 2, APPELLANTS

* [pursuant to Rule 43(c) F.R.A.P.]

11/6/91 CIVIL CASE DOCKETED. Notice filed by Arlen Specter, Harris Wofford, Bill Bradley, Frank R. Lautenberg, Robert P. Comm of PA, Ernest D. Preate, James J. Florio, State of NJ, Robert J. Del Tufo, Michael N. Castle, State of DE, Curt Weldon, Thomas Foglietta, Robert E. Andrews, R. Lawrence Coughlin,

Peter H. Kostmayer, Robert A. Borski, City of Philadelphia, Howard J. Landry, Local 3, William F. Reil, Local 687, Ronald Warrington, Local No 2. (sma)

* * * * *

11/14/91 BRIEF on behalf of APPELLANTS, Pages: 42, Copies: 10, Delivered by mail, filed. Certificate of service date 11/14/91. (rfl)

* * * * *

11/27/91 BRIEF on behalf of Appellee H. Lawrence Garrett, Appellee Richard Cheney, Appellee Def Base Closure, Appellee James A. Courter, Appellee William Ball, Appellee Howard H. Callaway, Appellee Duane H. Cassidy, Appellee Arthur Levitt, Appellee James C. Smith, Appellee Robert D. Stuart, Pages: 50, Copies: 10, Delivered by mail, filed. Certificate of Service date 11/27/91. (rfl)

* * * * *

12/6/91 REPLY BRIEF on behalf of APPELLANTS, Copies: 10, Delivered by mail, filed. Certificate of service date 12/6/91. (wab)

* * * * *

1/28/92 ARGUED 1/25/92 Panel: Stapleton, Scirica and Alito, Circuit Judges. At oral argument Court directed counsel to have transcript prepared of oral argument. (agb)

* * * * *

4/17/92 OPINION (Stapleton, Authoring Judge, Scirica and Alito, Circuit Judges), with separate concurring in part and dissenting in

part opinion by Judge Alito, filed. VACATED—SEE SUPREME COURT JUDGMENT ENTERED 12/14/92. (ch)

4/17/92 JUDGMENT, Reversing and Remanding to the said District Court for further proceedings consistent with the opinion of this Court. Costs taxed against the appellees, filed. VACATED—SEE SUPREME COURT JUDGMENT ENTERED 12/14/92. (ch)

* * * * *

5/1/92 PETITION by Appellees for rehearing in banc. Certificate of service dated 4/30/92, filed. (bj)

5/20/92 ORDER filed, (Sloviter, Chief Judge, Stapleton, Authoring Judge, Mansmann, Greenberg, Hutchinson, Scirica, Cowen, Nygaard and Alito, Circuit Judges) denying petition for in banc rehearing by Appellee H. Lawrence Garrett, Richard Cheney. Judge Alito would have granted rehearing. (bj)

5/28/92 MANDATE ISSUED, filed. (bj)

* * * * *

11/12/92 Letter dated November 9, 1992 from Clerk of Supreme Court advising that an order was entered 11/9/92 granting the petition for certiorari; the jmt is vacated & case remanded to U.S.C.A. for further consideration in light of Franklin v Mass 505 U.S. — 1992, received for the information of the court. (bj)

11/12/92 SUPREME COURT ORDER filed 11/9/92 granting petition for writ of certiorari and remanding the cause to this Court for further consideration in light of Franklin v. Massachusetts, 505 U.S. — (1992). (anh)

* * * * *

11/24/92 ORDER (Stapleton, Authoring Judge, Scirica and Alito, Circuit Judges) In view of the Supreme Court's remand of this case for reconsideration in light of Franklin [sic] v Mass, 505 U.S. — (1992)., the court would like supplemental briefing on (a) the significance of Franklin in the context of this case, and (b) whether any issues in this case as to which Franklin is relevant were preserved in the D.C. and not waived in this court. The parties will exchange main briefs on December 11, 1992 and may file reply briefs on or before December 18, 1992, filed. (bj)

12/11/92 BRIEF FOR APPELLANTS ON REMAND Pages: 15, Copies: orig & 10, Delivered by mail, filed. Certificate of service date 12/10/92. (bj)

12/11/92 ON REMAND FROM THE SUPREME COURT, Supplemental BRIEF for the Appellees, Pages: 15, Copies: orig & 9cc, Delivered by mail, filed. Certificate of Service date 12/11/92. (bj)

12/14/92 U.S. Supreme Court judgment as Filed in the Supreme Court on November 9, 1992: On consideration whereof it is ordered and adjudged by this Court that the judgment of USCA is VACATED and the case is remanded to USCA FOR THIRD CIRCUIT, in light of Franklin [sic] v Mass 505 U.S. — (1992, filed. (bj)

12/14/92 Copy of Order received from the Supreme Court of the United States allowing certiorari. The petition for writ of certiorari to this Court is granted. (S.C. No. 92-485) (anh)

12/18/92 REPLY BRIEF on behalf of Appellants Arlen Specter, et al. Copies: Orig & 9 copies, Delivered by mail, filed. Certificate of service date 12/18/92. (bj)

12/18/92 SUPPLEMENTAL REPLY BRIEF (on REMAND from the U.S. Supreme Court), on behalf of the appellees Pages: 10 Copies: orig & 9cc, Delivered by mail, filed. Certificate of service date 12/18/92. (bj)

2/24/93 ARGUED 2/24/93 Panel: Stapleton, Scirica, Alito, Circuit Judges. (agb)

* * * * *

5/18/93 OPINION ON REMAND FROM THE SUPREME COURT (Stapleton, Authoring Judge, Scirica and Alito, Circuit Judges), with a dissenting opinion by Judge Alito, filed. (bj)

5/18/93 JUDGMENT ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES: REVERSED and remanded to D.C. Costs taxed against the appellees, filed. (bj)

6/1/93 PETITION by Appellees for rehearing in banc, filed. Certificate of service dated 5/28/93. (ch)

6/14/93 ORDER filed (Sloviter, Chief Judge, Stapleton, Authoring Judge, Mansmann, Greenberg, Hutchinson, Scirica, Cowen, Nygaard, Alito, Lewis, Circuit Judges) denying petition for in banc rehearing by Appellees. Judges Hutchinson, Nygaard and Alito would have granted in banc. (bj)

6/21/92 MOTION filed by Appellees to stay mandate. Certificate of Service dated 6/21/93. (bj)

* * * * *

7/2/93 ORDER filed (Stapleton, Circuit Judge) granting motion to stay mandate by Appellee Def Base Closure. Mandate Stayed to 7/21/93 (ch)

7/21/93 MOTION filed by Appellee to FURTHER stay mandate to and including August 20, 1993. Certificate of Service dated 7/20/93. (bj)

7/21/93 RESPONSE filed by Appellants to motion by Appellees to further stay mandate. Certificate of service dated 7/21/93 (bj)

7/26/93 ORDER filed (Stapleton, Authoring Judge) granting motion to further stay mandate by Appellee Sec of the Navy. Mandate Stayed to 8/20/93 (bj)

8/18/93 MOTION filed by Secretary Defense to further stay mandate until 8/27/93. Certificate of Service dated 8/17/93. (bj)

8/18/93 ORDER filed (Alito, Circuit Judge) granting motion to further stay mandate by Appellee Secretary Defense. Mandate Further Stayed to 8/27/93 (bj)

* * * * *

10/27/93 U.S. Supreme Court order dated 10/18/93 at S.C. number: 93-289, granting petition for writ of certiorari by Appellee Secretary Navy. filed. (bj)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. 91-CV-4322

SEN. ARLEN SPECTER, SEN. HARRIS WOFFORD, SEN. BILL
BRADLEY, SEN. FRANK R. LAUTENBERG, GOVERNOR
ROBERT P. CASEY, COMMONWEALTH OF PENNSYLVANIA,
PENNSYLVANIA ATTORNEY GENERAL ERNEST D. PREATE,
JR., GOVERNOR JAMES J. FLORIO, STATE OF NEW JERSEY,
NEW JERSEY ATTORNEY GENERAL ROBERT J. DEL TUFO,
GOVERNOR MICHAEL N. CASTLE, STATE OF DELAWARE,
REP. CURT WELDON, REP. THOMAS FOGLIETTA, REP.
ROBERT ANDREWS, REP. R. LAWRENCE COUGHLIN,
REP. PETER H. KOSTMEYER, REP. ROBERT A. BORSKI,
CITY OF PHILADELPHIA, HOWARD J. LANDRY AND
INTERNATIONAL FEDERATION OF PROFESSIONAL AND
TECHNICAL ENGINEERS, LOCAL 3, WILLIAM F. REIL AND
METAL TRADES COUNCIL, LOCAL 687 MACHINISTS AND
RONALD WARRINGTON AND PLANNERS ESTIMATORS
PROGRESSMAN & SCHEDULERS UNION, LOCAL NO. 2,
PLAINTIFFS

v.

H. LAWRENCE GARRETT, III, THE SECRETARY OF THE
NAVY, RICHARD CHENEY, THE SECRETARY OF DEFENSE,
THE DEFENSE BASE CLOSURE AND REALIGNMENT
COMMISSION AND ITS MEMBERS JAMES A. COURTER,
WILLIAM L. BALL, III, HOWARD H. CALLAWAY, DUANE
H. CASSIDY, ARTHUR LEVITT, JR., JAMES C. SMITH, II,
AND ROBERT D. STUART, JR., DEFENDANTS

VERIFIED AMENDED COMPLAINT FOR DECLARATORY
JUDGMENT AND PRELIMINARY INJUNCTIVE RELIEF

Plaintiffs U.S. Sen. Arlen Specter, U.S. Sen. Harris Wofford, U.S. Sen. Bill Bradley, U.S. Sen. Frank R. Lautenberg, Governor Robert P. Casey, the Commonwealth of Pennsylvania, Pennsylvania Attorney General Ernest D. Preate, Jr., Governor James J. Florio, the State of New Jersey, New Jersey Attorney General Robert J. Del Tufo, Governor Michael N. Castle, the State of Delaware, U.S. Rep. Curt Weldon, U.S. Rep. Thomas Foglietta, U.S. Rep. Robert E. Andrews, U.S. Rep. R. Lawrence Coughlin, U.S. Rep. Peter H. Kostmayer, U.S. Rep. Robert A. Borski, the City of Philadelphia, Howard J. Landry, International Federation of Professional and Technical Engineers, Local 3, William F. Reil, Metal Trades Council, Local 687 Machinists, Ronald Warrington and the Planners Estimators Progressman & Schedulers Union, Local No. 2 allege as follows:

INTRODUCTION

1. A declaratory judgment and preliminary injunction are necessary to prevent the imminent and unlawful closing of the Philadelphia Naval Shipyard (also referred to as the "Shipyard"), the largest employer in the Philadelphia area. The actions taken by the government officials responsible for ensuring an independent, equal, lawful and fair process for closing and realigning military installations under the Defense Base Closure and Realignment Act of 1990 (the "Base Closure Act"), Public Law 101-510, Title XXIX, §§ 2901-2910 (November 5, 1990), have violated the Base Closure Act and the procedures and regulations promulgated thereunder in *at least 19 separate and material respects*.

2. The plaintiffs respectfully request a declaratory judgment that the Secretary of Defense, the Secretary of the Navy and the Base Closure and Realignment Commission's actions are fundamentally inconsistent with the Base Closure Act and other applicable law and are therefore void.

3. Immediate injunctive relief is necessary because the defendants' unlawful conduct has not only resulted in the Shipyard being placed on a list of military installations slated for closure but the Navy has already taken actions to close the Shipyard which will be irreversible if not addressed immediately.

4. If the requested relief is not granted, the plaintiffs will be immediately and irreparably injured.

PLAINTIFFS

5. Plaintiff United States Senator Arlen Specter is a citizen of the Commonwealth of Pennsylvania with his residence in Philadelphia County, Pennsylvania, and an office at Room 9400, Green Federal Building, 6th and Arch Streets, Philadelphia, Pennsylvania.

6. Plaintiff United States Senator Harris Wofford is a citizen of the Commonwealth of Pennsylvania with his residence in Montgomery County, Pennsylvania, and an office at Room 9456, Green Federal Building, 6th and Arch Streets, Philadelphia, Pennsylvania.

7. Plaintiff United States Senator Bill Bradley is a citizen of the State of New Jersey with his residence in Morris County, New Jersey, and an office at Union-1605, Vauxhall Road, Union, New Jersey.

8. Plaintiff United States Senator Frank R. Lautenberg is a citizen of the State of New Jersey with his residence in Secaucus, New Jersey, and an office at Gateway I, Newark, New Jersey.

9. Plaintiff Robert P. Casey, Governor of the Commonwealth of Pennsylvania, is a citizen of the Commonwealth of Pennsylvania with his residence in Lackawanna County, Pennsylvania, and an office at Room 229, Main Capitol, Harrisburg, Pennsylvania.

10. Plaintiff the Commonwealth of Pennsylvania is a Sovereign State of the United States.

11. Plaintiff Pennsylvania Attorney General Ernest D. Preate, Jr. is a citizen of the Commonwealth of Pennsylvania with his residence in Lackawanna County, Pennsylvania, and an office at 16th Floor, Strawberry Square, Harrisburg, Pennsylvania. Plaintiff Preate sues individually and as Attorney General of the Commonwealth of Pennsylvania.

12. Plaintiff James J. Florio, Governor of the State of New Jersey, is a citizen of the State of New Jersey with his office at the State House, in the City of Trenton, County of Mercer, State of New Jersey.

13. Plaintiff, the State of New Jersey, is a Sovereign State of the United States.

14. Plaintiff Robert J. Del Tufo, Attorney General of the State of New Jersey, is a citizen of the State of New Jersey with his office at the Richard J. Hughes Justice Complex, in the City of Trenton, County of Mercer, State of New Jersey. As the chief law enforcement officer of the State of New Jersey, Attorney General Del Tufo's authority extends to legal matters of public importance and in the public interest and taking such action as he deems necessary to represent the interests of the State and its citizens, authority that is generally established by Art. V, § IV, ¶ 3 of the 1947 New Jersey Constitution, and is further enhanced by legislative enactment pursuant to N.J.S.A. 52:17A-1 *et seq.* and N.J.S.A. 52:17B-1 *et seq.* In addition, Attorney General Del Tufo has the authority to sue as *parens patriae* on behalf of the citizens of the

State of New Jersey to prevent or redress the direct and vital adverse economic impact that would be experienced by the State of New Jersey and its citizens by a closing of the Philadelphia Naval Shipyard.

15. Plaintiff Michael N. Castle, Governor of the State of Delaware, is a citizen of the State of Delaware with his office at Legislative Hall, Dover, Delaware.

16. Plaintiff, the State of Delaware, is a Sovereign State of the United States.

17. Plaintiff United States Representative Curt Weldon is a citizen of the Commonwealth of Pennsylvania with his residence in Delaware County, Pennsylvania, and an office at 1554 Garrett Road, Upper Darby, Pennsylvania.

18. Plaintiff United States Representative Thomas Foglietta is a citizen of the Commonwealth of Pennsylvania with his residence in Philadelphia County, Pennsylvania, and an office at Room 10402, Green Federal Building, 6th and Arch Streets, Philadelphia, Pennsylvania.

19. Plaintiff United States Representative Robert E. Andrews is a citizen of the State of New Jersey with his residence in Camden County, New Jersey, and an office at 16 Somerdale Square, Somerdale, New Jersey 08083.

20. Plaintiff United States Representative R. Lawrence Coughlin is a citizen of the Commonwealth of Pennsylvania with his residence in Montgomery County, Pennsylvania, and an office in Norristown, Pennsylvania.

21. Plaintiff United States Representative Peter H. Kostmayer is a citizen of the Commonwealth of Pennsylvania with his residence in Bucks County, Pennsylvania, and an office at 150 South Main Street, Doylestown, Pennsylvania.

22. Plaintiff United States Representative Robert A. Borski is a citizen of the Commonwealth of Pennsylvania

with his residence in Philadelphia County, Pennsylvania, and an office at 7141 Frankford Avenue, Philadelphia, Pennsylvania.

23. Plaintiff the City of Philadelphia is a municipality of the Commonwealth of Pennsylvania.

24. Plaintiff Howard J. Landry is the President of the International Federation of Professional and Technical Engineers, Local 3, and is a citizen of the State of New Jersey with his residence in Cherry Hill, New Jersey. Landry has been employed since 1972 by the Shipyard and has over twenty-seven years of federal service employment. Landry is a member of the class of employees whose jobs will be eliminated if the Shipyard is closed in accordance with the July 1, 1991 recommendation of the Defense Base Closure and Realignment Commission.

25. Plaintiff International Federation of Professional and Technical Engineers ("IFPTE"), Local 3, is the exclusive bargaining representative for virtually all General Schedule ("GS") employees of the Shipyard. IFPTE Local 3 has its principal place of business at the Shipyard, Philadelphia, Pennsylvania. IFPTE represents over 1,300 employees of the Shipyard. These employees are employed in GS grades 3 through 12 and work as engineers, technicians and clerical staff, predominantly holding positions in all phases of the repair, overhaul and maintenance of Navy vessels. All of these employees are being affected by the Navy's current conduct and virtually all of these employees will lose their jobs if the Shipyard is closed in accordance with the July 1, 1991 recommendation of the Defense Base Closure and Realignment Commission.

26. Plaintiff William F. Reil, the President of the Metal Trades Council, Local 687 Machinists, is a citizen of the Commonwealth of Pennsylvania with his residence in Philadelphia, Pennsylvania. Reil has been employed since 1953 by the Shipyard. Reil is a member of the class of

employees whose jobs will be eliminated if the Shipyard is closed in accordance with the July 1, 1991 recommendation of the Defense Base Closure and Realignment Commission.

27. Plaintiff Metal Trades Council, Local 687 Machinists ("MTC"), is the exclusive bargaining representative for all blue collar workers at the Shipyard. MTC represents over 8,000 employees of the Shipyard and Naval Station. All of these employees are being affected by the Navy's current conduct and virtually all of these employees will lose their jobs if the Shipyard is closed in accordance with the July 1, 1991 recommendation of the Defense Base Closure and Realignment Commission.

28. Plaintiff Ronald Warrington is the President of the Planners Estimators Progressman & Schedulers Union, Local No. 2, and is a citizen of the State of New Jersey with his residence in Cherry Hill, New Jersey. Ronald Warrington is a member of a class of employees whose jobs will be eliminated if the Shipyard is closed in accordance with the July 1, 1991 recommendation of the Defense Base Closure and Realignment Commission.

29. Plaintiff Planners Estimators Progressman & Schedulers Union, Local No. 2 ("PEP&S"), is the exclusive bargaining representative for approximately 350 employees of the Shipyard. PEP&S has its principal place of business at the Shipyard, Philadelphia, Pennsylvania. All of these employees are being affected by the Navy's current conduct and virtually all of these employees will lose their jobs if the Shipyard is closed in accordance with the July 1, 1991 recommendation of the Defense Base Closure and Realignment Commission.

DEFENDANTS

30. Defendant H. Lawrence Garrett, III is the Secretary of the Navy and maintains his principal office at the Department of the Navy, The Pentagon, Washington,

D.C. Defendant Garrett is sued in his official capacity as Secretary of Navy.

31. Defendant Richard Cheney is the Secretary of Defense and maintains his principal office at the Department of Defense, The Pentagon, Washington, D.C. Defendant Cheney is sued in his official capacity as Secretary of Defense.

32. Defendant The Defense Base Closure and Realignment Commission (the "Commission") is the agency of the United States charged with ensuring an independent, equal, lawful and fair process for closing and realigning military installations.

33. Defendant James A. Courier is Chairman of the Commission and is sued in his official capacity.

34. Defendant William L. Ball, III is a member of the Commission and is sued in his official capacity.

35. Defendant Howard H. Callaway is a member of the Commission and is sued in his official capacity.

36. Defendant Gen. Duane H. Cassidy, USAF (Ret.) is a member of the Commission and is sued in his official capacity.

37. Defendant Arthur Levitt Jr. is a member of the Commission and is sued in his official capacity.

38. Defendant James C. Smith, II, P.E. is a member of the Commission and is sued in his official capacity.

39. Defendant Robert D. Stuart, Jr. is a member of the Commission and is sued in his official capacity.

JURISDICTION AND VENUE

40. This Court has jurisdiction over the subject matter of this lawsuit pursuant to: (a) the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202; (b) 28 U.S.C. §§ 1331, 1337, 1346 and 1361; (c) the Defense Base Closure and Realignment Act of 1990, Public Law 101-510, Title

XXIX, §§ 2901-2910 (November 5, 1990); and (d) the Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq.*

41. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

STATEMENT OF FACTS

A. *The Philadelphia Naval Shipyard*

42. Founded in 1801, the Philadelphia Naval Shipyard is a major industrial complex consisting of extensive and large drydocks, piers, production shops, equipment and other assets valued at almost 3 billion dollars. The Philadelphia Naval Station services the Shipyard.

43. Operations at the Shipyard involve at least 47,000 jobs in the Philadelphia metropolitan area (31,000 direct and indirect positions, 7,000 additional ship-associated personnel and 9,100 direct and indirect positions associated with the Philadelphia Naval Station).

44. There are eight Naval Shipyard in the United States: Puget Sound, Norfolk, Philadelphia, Mare Island, Charleston, Pearl Harbor, Portsmouth and Long Beach.

45. Almost 15% of the total repair and modernization work performed by all eight Naval Shipyards is accomplished at the Philadelphia Shipyard.

46. In addition to performing work on large amphibious ships and other large vessels, the Philadelphia Shipyard's physical assets and experienced work force make it the premier facility for work on the Navy's non-nuclear aircraft carriers and highly sophisticated and complex cruisers and destroyers.

47. The Shipyard excels in the Service Life Extension Program ("SLEP"), which extends the life of non-nuclear carriers in the Naval fleet by 15-30 years at a cost of about \$1 billion or less per carrier.

48. Philadelphia is the only Naval Shipyard performing SLEP work.

49. In the 1991 Defense Appropriation Act, the Congress has required a \$405 million CV-SLEP on the aircraft carrier U.S.S. Kennedy to be performed at the Shipyard. The CV-SLEP is not scheduled to be completed until mid-1996.

50. From 1980 through the present, Philadelphia has led all eight Naval Shipyards in efficiency and cost-effectiveness, due largely to the excellence of its highly skilled work force.

51. Contrary to the statements of the Navy, not a penny will be saved by the closure of the Shipyard.

52. Philadelphia is one of only two Naval Shipyards operating in the black with positive net operating results in the last two years.

53. The Shipyard differs from most other governmental agencies because it operates as a private business and is not funded directly from the defense budget. Personnel payrolls, building maintenance and nearly all other overhead and operating expenses are paid for by selling Shipyard services to customers in a highly competitive environment.

54. Unlike most other governmental agencies, the Shipyard does not receive annual appropriations in support of operations. Rather, it generates its revenues by charging customers for work performed.

55. If the Shipyard is closed, the work performed there will ultimately be performed at greater cost to the Navy.

B. *Enactment of the 1990 Defense Base Closure and Realignment Act*

56. On May 3, 1988, then Secretary of Defense, Frank Carlucci, chartered the Defense Secretary's Commission

on Base Realignment and Closure to evaluate and recommend a reduction in the military installations located in the United States.

57. In October 1988, Congress passed and the President signed Public Law 100-526, the Defense Authorization Amendment and Base Closure and Realignment Act.

58. The 1988 Commission on Base Realignment and Closure recommended that 86 bases be closed and 59 bases be realigned or partially closed. These recommendations were strongly criticized by members of Congress and the public.

59. Congressional critics contended that the 1988 base closure and realignment recommendation process had not been sufficiently open to public scrutiny.

60. Congressional critics also charged that faulty data had been used to reach the 1988 final closure recommendations.

61. Congress believed that the General Accounting Office ("GAO") should have reviewed the data considered by the 1988 Commission on Base Realignment and Closure.

62. On January 29, 1990, Secretary of Defense Cheney announced a proposal to close 36 bases in the United States, including the Shipyard.

63. In connection with that proposal, the Vice Chief of Naval Operations conducted a study to justify the proposed closure. This study concluded that the Shipyard should not be closed.

64. On November 5, 1990, to redress the criticisms raised by the 1988 base closure process, the President signed into law the Base Closure Act.

65. The Base Closure Act:

(a) Expressly stated that its "purpose" was "to provide a *fair process* that will result in the timely closure and realignment of military installations" [10 U.S.C. § 2901(b) (emphasis supplied)];

(b) Required that all meetings of the Commission "be open to the public," except where classified information was being discussed [10 U.S.C. § 2902(e)(2)(A)];

(c) Mandated the development and application of "final criteria" for making the closure and realignment determinations [10 U.S.C. § 2903(b)(2)(A) and (c)];

(d) Mandated the creation of a six year force-structure plan for the Armed Forces for making the closure and realignment determinations [10 U.S.C. § 2903(a) and (c)];

(e) Required the Secretary of Defense to consider all military installations "equally" for closure or realignment [10 U.S.C. § 2903(c)(3)];

(f) Required the Secretary of Defense to transmit to the Commission "a summary of the selection process that resulted in the recommendation for [closure or realignment] of each installation, including a justification for each recommendation [10 U.S.C. § 2903(c)(2)];

(g) Required the Secretary of Defense to transmit to the GAO "all information used by the Department in making its recommendations to the Commission for closures and realignments," and required the GAO (i) to assist the Commission in its review and analysis of the recommendations made by the Secretary and (ii) to transmit to the Commission and to Congress "a report containing a detailed analysis of the Secretary's recommendations and selection process" 45 days *before* the Commission's report was to be transmitted to the President [10 U.S.C. §§ 2903(c)(4), 2903(d)(5)(A) and 2903(d)(5)(B)]; and

(h) Proscribed the Secretary of Defense from carrying out any closure or realignment recommendation before the earlier of (i) the enactment of a joint resolution by Congress disapproving the closure recommendations, or (ii) the expiration of a 45 day statutory period that commenced on the day that the President transmitted the recommended closure and realignment list to Congress. [10 U.S.C. § 2904(b)].

C. The Oversight Role of Congress Under the Base Closure Act

66. The April 1991 Base Closure and Realignment Report of the Department of Defense ("DOD") acknowledges the significant oversight role retained by Congress with respect to military installation closures and realignments:

- (a) Authority to disapprove by law the Secretary's final criteria;
- (b) Receipt of the Secretary of Defense's force structure plan;
- (c) Receipt of the Secretary's recommended closures and realignments;
- (d) The role of the General Accounting Office; and
- (e) The requirement that the Commission's proceedings, information, and deliberations be open, on request, to designated members of Congress.

D. The Evaluative and Oversight Role of the General Accounting Office Under the Base Closure Act

67. During the 1988 base closure process, Congress belatedly called upon the GAO to examine the 1988 commission's methodology, findings and recommendations.

68. Congress ensured an integral and timely role for the GAO during the 1991 base closure process.

69. The Secretary's April 1991 Base Closure and Realignment Report to the Commission described the GAO's essential role:

Public Law 101-510 provided for the General Accounting Office (GAO) to *monitor* the activities, *while they occur*, of the Military Departments, the Defense Agencies and the Department of Defense in selecting bases for closure or realignment under the Act.

The GAO is required to provide the Commission and the Congress with a detailed analysis of the Secretary of Defense's recommendations and selection process. The GAO report, due by May 15, 1991, is also intended to describe how the DOD selection process was conducted and whether it met the requirements of the Act. In addition, the GAO is required to assist the Commission, if requested, with its review and analysis of the Secretary's recommendations. (Emphasis supplied.)

70. Purporting to comply with Congressional mandates, the Commission stated at p. 1-5 of its July 1, 1991 Base Closure and Realignment Report to the President that the "GAO has been an integral part of the process."

E. The 1991 Defense Base Closure Commission

71. The Base Closure Act provides for an eight member Commission to conduct an independent, equal, lawful and fair process for closing and realigning military installations.

72. To ensure the independence of the Commission, the Base Closure Act requires that the President nominate commissioners only after consulting with the speaker of the House of Representatives concerning the appointment of two members, the majority leader of the Senate concerning two members, the minority leader of the House of Representatives concerning the appointment of one member and the minority leader of the Senate concerning the appointment of one member.

73. The President nominated former New Jersey Congressman James A. Courter as Chairman of the Commission and the following seven as members of the Commission: William L. Ball, III, former Secretary of the Navy; Howard H. (Bo) Callaway, former Secretary of the Army;

Duane H. Cassidy, former commander-in-chief of the United States Transportation Command of the Military Airlift Command; Arthur Levitt, Jr., chairman of the board of Levitt Media Company; James C. Smith II, P.E., formerly a member of the Secretary of Defense's 1988 Base Closure Commission; Robert D. Stuart, Jr., former chairman of the board of the Quaker Oats Company; and Alexander Trowbridge, former Secretary of Commerce.

74. These nominations were confirmed by the Senate.

75. On May 17, 1991, Alexander Trowbridge resigned from the Commission because of a conflict of interest arising out of his ownership of a majority of stock in certain companies that had significant Pentagon contracts. At least one other Commissioner, James C. Smith, II, is employed by a firm that has substantial military construction contracts with the pentagon. Nevertheless, Trowbridge was the only Commissioner to resign.

76. Section 2902 of the Base Closure Act requires that all vacancies be filled in the same manner as the original appointment.

77. In accordance with Congress' oversight role under the Base Closure Act, Alexander Trowbridge had been nominated by the President after consultation with Speaker Foley.

78. In violation of the Base Closure Act, Trowbridge's vacancy was never filled.

79. The Commission established four procedures for gathering evidence to review the DOD's base closure proposals: (a) 15 public hearings in Washington, D.C. to receive information from the DOD, legislators and other experts; (b) 14 regional and site hearings to obtain public comment; (c) site visits by the Commissioners of the major facilities proposed for closure; and (d) review by the Commission's staff of the Armed Services' processes and data.

80. Under the Base Closure Act, the Commission was required to submit its Report to the President by July 1, 1991, setting forth its findings, conclusions and recommendations for closures and realignments inside the United States.

F. The Department of Defense Base Closure Criteria and Process

81. The Base Closure Act directs the Secretary of Defense to: (1) develop selection criteria for making recommendations for the closure of military installations and to finalize such criteria after public comment; (2) provide to Congress (with the Department of Defense's budget request for fiscal year 1992) a six-year, force-structure plan for the Armed Forces; (3) submit to the Commission by April 15, 1991 a list of military installations recommended for closure or realignment "*on the basis of the force-structure plan and the final criteria*" [10 U.S.C. § 2903(c)(1) (emphasis supplied)]; and (4) make available to the Commission, the GAO and Congress "*all information* used by the Department in making its recommendations to the Commission for closures and realignments" [10 U.S.C. § 2903(c)(4) (emphasis supplied)].

82. As part of the objective process for determining whether to close a military installation, the Base Closure Act required the Secretary of Defense to establish selection criteria to be used in making a closure recommendation.

83. In developing these criteria, the Secretary was required to publish proposed criteria in the *Federal Register* and solicit public comments.

84. The DOD published eight proposed criteria and requested comments on November 30, 1990.

85. The proposed criteria closely mirrored the criteria established for the 1988 Defense Secretary's Commission on Base Realignment and Closure. The only notable dif-

ferences were that priority consideration was given to military value criteria and payback was no longer limited to six years.

86. As a result of numerous public concerns raised about the criteria's broad nature and the need for objective measures or factors for the criteria, on December 10, 1990, the DOD issued a memorandum setting forth "policy guidance" and "record keeping" requirements to the Military Departments as follows:

The recommendations in the studies must be based on the final base closure and realignment selection criteria established under that Section [2903 of the Act]; and

The studies must consider *all* military installations inside the United States . . . *on an equal footing*, . . .

* * *

DOD components shall keep:

- Descriptions of how base closure and realignment selections were made, and how they met the final selection criteria;
- Data, information and analysis considered in making base closure and realignment selections; and
- Documentation for each recommendation to the Secretary of Defense to close or realign a military installation under the Act. (Emphasis supplied.)

87. On February 13, 1991, the DOD issued a memorandum setting forth "internal control" guidance to the Military Departments requiring implementation of an "internal control plan" which "at a minimum" was to include:

- Uniform guidance defining data requirements and sources for each category of base,

- Systems for verifying accuracy of data,
- Documentation justifying any changes made to data submissions, and
- Procedures to check the accuracy of the analysis made from the data provided.

88. The February 13, 1991 DOD Memorandum also provided the following procedures for evaluating closures and realignments: (a) if there was no excess capacity in a certain category, the bases in that category were exempted from closure; (b) if there was excess capacity and a base was recommended for closure or realignment, the Department's analysis must have considered all military bases within that category and any cross-categories; and (c) military bases could only be excluded from further review if they were militarily/geographically unique or mission essential such that no other base could substitute for them.

89. On February 15, 1991, the DOD published in the *Federal Register* eight proposed final criteria to govern the base closure and realignment process.

90. The first four criteria concerned "military value," and were to receive preference:

- (1) Current and future mission requirements and the impact of operational readiness of the Department of Defense's total-force.
- (2) The availability and condition of land, facilities and associated air space at both the existing and potential receiving locations.
- (3) The ability to accommodate contingency, mobilization, and future total force requirements at both the existing and potential receiving locations.
- (4) The cost and manpower implications.

The fifth criteria concerned "return on investment":

- (5) The extent and timing of potential costs and savings, including the number of years, beginning with the date of completion of closure or realignment, for the savings to exceed the costs.

The final three criteria involved "impacts":

- (6) The economic impact on local communities.
- (7) The ability of both the existing and potential receiving communities' infrastructures to support forces, missions, and personnel.
- (8) The environmental impact.

91. The proposed criteria were subject to Congressional review between February 15, 1991 and March 15, 1991. The criteria became final on March 15, 1991.

G. The Necessity For The Navy To Develop And Implement An Internal Control Plan

92. The February 13, 1991 DOD Memorandum also required each Military Department to develop and implement an "internal control plan" to ensure the accuracy of data collection and analyses. At a minimum, the internal control plan was required to include (1) uniform guidance defining data requirements and sources for each category of base, (2) systems for verifying accuracy of data, (3) documentation justifying any changes made to data submissions, and (4) procedures to check the accuracy of the analyses made from the data provided.

93. The Navy failed to implement an "internal control plan" that ensured the accuracy of its data collection and analysis. The Navy did not prepare minutes of its deliberations on closures and realignments.

H. The Navy's Pre-Determination to Close the Philadelphia Naval Shipyard

94. On December 10, 1990, the DOD issued the exclusive procedures which the Military Departments were to follow in making defense base closure and realignment recommendations.

95. In accordance with the Base Closure Act, the procedures required that all military installations be considered *equally*, "without regard to whether the installation has been previously considered or proposed for closure or realignment by the Department of Defense."

96. In blatant contravention of the express language of the Base Closure Act, its own internal procedures and clear Congressional intent to establish an objective and fair process, the Navy used a completely arbitrary, subjective process designed to justify a pre-determined conclusion to close the Shipyard.

97. Documents that were withheld by the Navy until after the close of the Commission's public hearings established that, as early as December 19, 1990—prior to the DOD's establishment of a force structure plan or final criteria for evaluating base closures—the Secretary of the Navy had already decided to close the Shipyard.

98. *On December 19, 1990, Admiral Peter Hekman, then Commander of the Naval Sea Systems Command, wrote a memorandum to the Chief of Naval Operations urging the Navy's reconsideration of its decision to close the Shipyard:*

While I realized that the Secretary has been briefed and has concurred with the proposal to mothball Philadelphia Naval Shipyard, I strongly recommend that this decision be reconsidered. It is more prudent to downsize Philadelphia Naval Shipyard . . .

Further, I recommend that the drawdown of Philadelphia Naval Shipyard to an SRF size shipyard not be done until FY 95, as the shipyard is required to support scheduled workload until that time. (Emphasis supplied.)

99. Although Admiral Hekman was responsible for oversight of all Naval Shipyards, the Navy refused to allow him to become a part of the base closure process.

100. Admiral Hekman retired from the Navy on or about May 1, 1991. After his retirement, Admiral Hekman was instructed by the Assistant Secretary of the Navy, Donald Howard, that he was *not* to testify before the Commission at the public hearings on the Philadelphia Naval Shipyard.

101. The Navy predetermination to close the Philadelphia Naval Shipyard is confirmed by its treatment of other Naval Shipyards during the base closure process.

102. Navy guidelines expressly prohibited non-emergency capital upgrades of any military installations on the 1990 Base Closure List during the 1991 base closure process.

103. Nevertheless, on February 4, 1991—one day prior to the commencement of the Navy's force structure review process—the Chief Naval Officer requested \$1.05 million to upgrade for nuclear certification a shipyard that was clearly subject to the base closure process: Long Beach Naval Shipyard.

104. Long Beach is the only shipyard other than Philadelphia that does not have a nuclear certification.

105. The Navy's decision to upgrade Long Beach not only violated its own guidelines but clearly establishes a predisposition by the Navy to close the Philadelphia Naval Shipyard.

I. The Navy Base Structure Committee's Blatant Disregard for its Own Evaluation Results

106. In December 1990, the Secretary of the Navy established a six-member Base Structure Committee ("BSC") to conduct a base structure review and to determine the Navy's closure and realignment candidates.

107. The BSC was charged with reviewing all installations inside the United States *equally*, "without regard to whether the installation was previously considered for closure or realignment."

108. By applying their admittedly subjective judgment, the BSC candidly admitted that it arrived at base closure decisions that "differed from the assessments one might make using the raw empirical data."

109. The BSC initially categorized all facilities according to function—e.g., Naval Air Stations, Naval Shipyards—to determine which categories possessed significant capacity.

110. The Navy then applied the eight selection criteria in two phases by assigning color codes to military bases in categories with excess capacity.

111. Phase I of the BSC's analysis required a consideration of the first four military criteria. After Phase I was completed, the Navy excluded those bases which it determined "were distinguished by virtue of their operational value," *i.e.* those that it gave an overall "green" rating under the first four military criteria.

112. Under the Navy's rating system, a "green" rating received one point, a "yellow" rating received two points, and a "red" rating (favoring closure) received three points.

113. The Navy's color-coded/point approach resulted in the following total point allocations to each of the eight Naval Shipyards in the United States:

<u>Shipyard</u>	<u>Points</u>
Puget Sound, WA	4
Norfolk, VA	5
Philadelphia, PA	6
Charleston, SC	6
Mare Island, CA	6
Pearl Harbour, HI	6
Portsmouth, ME	6
Long Beach, CA	7

114. Puget Sound received a "green" rating for each of the first four military criteria and was therefore excluded from further closure consideration.

115. In accordance with the BSC base closure criteria, the seven remaining Naval Shipyards should have been evaluated under the remaining four non-military criteria set forth in Phase II.

116. Using the BSC's own rating system, the Philadelphia Naval Shipyard should have been treated the same as Charleston, Mare Island, Pearl Harbor and Portsmouth and better than Long Beach.

117. Ignoring its own rating system and in blatant disregard of the statutory mandate that all bases be considered "equally," the Navy—for no apparent reason and without any supporting documentation or analysis—gave overall "green" ratings to three *undeserving* shipyards: Mare Island, which just like Philadelphia Naval Shipyard, received two "yellow" and two "green" ratings; Norfolk, which received three "green" and one "yellow" ratings; and Pearl Harbor, which received one "red" and three "green" ratings.

118. The BSC then arbitrarily, unilaterally and without reference to any one of the eight DOD criteria excluded all of the six nuclear-capable shipyards from any further review without providing any documentation or

analysis to justify a drydock need for nuclear ships as compared with conventional carriers.

119. This process left only Long Beach (which is one of *two* California shipyards) and Philadelphia for further review.

120. To circumvent the fact that Long Beach scored poorly in three of the four military criteria and overall had the worst rating of all eight Naval Shipyards, the BSC then excluded Long Beach from further consideration contending that *one* of the drydocks at that Shipyard could be used "to handle West Coast aircraft carriers (including CVN emergency work)." [Navy Report, Tab C, p. 10].

121. By this egregious process of elimination, the BSC was left with *only one yard* to consider for closure under the remaining four criteria, the Philadelphia Naval Shipyard. The BSC then performed a perfunctory application of the second four non-military criteria with respect to the Philadelphia Naval Shipyard to ensure its closure.

122. The Navy's misconduct with respect to consideration of the non-military criteria was equally egregious.

123. For example, the Navy represented to the GAO and the Commission that closure of the Philadelphia Naval Shipyard would only cost the government approximately \$129.8 million. [Navy Report, Tab C, p. 13]. It was not until *after* this lawsuit was filed that the Navy expressly requested and obtained the actual cost of closing the Philadelphia Naval Shipyard—an amount was "conservatively" estimated to be \$1 billion.

J. The Navy's Force Structure Plan

124. The Base Closure Act required the Navy to create a force-structure plan based on the Navy's inventory of its fleet and projections of work necessary to upgrade and maintain its fleet during a six year fiscal period. Base

closure recommendations and decisions were to be based on this plan, pursuant to Section 2903(a) and (c) of the Base Closure Act.

125. The Navy's force structure plan and conclusions regarding the Navy's drydock needs fall far short of the statutory requirements. The plan fails to provide the requisite specificity necessary to determine how many large drydocks, such as those at the Shipyard, the Navy will need from 1992 through 1997, including the number and types of ships that will remain in the fleet and the number of anticipated repairs, overhauls and refuelings required on those ships during the relevant time period.

126. In fact, the Navy's own April 1991 Report contradicts the conclusion that any of the Naval Shipyards should be closed.

127. The Navy's Report stated that the Navy is currently fully utilizing its drydocks "in excess of 100%." The Report also stated that the number of large amphibious ships is increasing and for 1994 and 1997 there will be insufficient naval drydocks to handle large carriers. [Navy Report, Tab C, p. 2].

128. In its Report, the Navy also determined that shipyard workloads would be virtually unaffected:

While the Navy fleet in general is downsizing by 19%, *the types of ships worked on by the Naval Shipyards is downsizing by only 1%, and in some cases is increasing (large Amphibious and AEGIS ships)*. Thus, the need for certain facilities to accomplish this work is *not* diminished.

[Navy Report, Tab C, p. 2 (emphasis added)].

129. A March 1991 memorandum from Admiral Claman, Commander Naval Sea Systems Command, to the Chief of Naval Operations confirmed that the Navy's utilization of shipyards for large amphibious ships and

other large vessels would be between 84.2% and 106.9% for fiscal years 1992 through 1997.

130. Since the Navy requires that Shipyards reserve 30% of their space for emergency repairs, it is clear that Shipyards, such as the *Philadelphia Naval Shipyard*, servicing large amphibious ships and other large vessels *will have no "excess" capacity during the relevant six year period and should have been excluded from further review under the base closure process*.

131. The Navy's failure to prepare and follow an adequate force structure plan substantially prejudiced Naval Shipyards, such as the Philadelphia Naval Shipyard, since Philadelphia has: (a) three of the Navy's five East Coast drydocks that are capable of handling large amphibious ships and other large vessels; and (b) two of only three East Coast drydocks capable of handling carriers.

132. A March 15, 1991 memo from Admiral Hekman to the Chief of Naval Operations recognized that "retention of a credible repair capability at Philadelphia for naval ships home ported in the Northeast area is the most cost effective solution." Admiral Hekman concluded that:

[T]he workload distribution for naval shipyard in the 90's supports full operations at Philadelphia through mid FY 95. As previously briefed, executing a realignment of Philadelphia Naval Shipyard in FY 93 will cause significant perturbations to carrier overhauling yard assignment and could result in an East Coast CV overhauling on the West Coast.

133. Despite express requests for the foregoing information by interested members of Congress, the Navy deliberately withheld the Claman and Hekman memoranda from the GAO, the Commission, Congress and the public until after the close of the public hearings.

134. The BSC submitted its recommendations, including its proposal to close the Philadelphia Naval Shipyard, to the Secretary of the Navy.

135. The Secretary of the Navy submitted BSC's nominated bases for closure and realignment to the Secretary of Defense.

136. On April 12, 1991, Secretary Cheney issued the DOD's Base Closure Report. The Report adopted the Navy's proposals and recommended 43 base closures, including the Philadelphia Naval Shipyard.

K. The May 16, 1991 General Accounting Office Report

137. The Base Closure Act provides for the GAO to monitor the activities of the Military Departments, the Defense Agencies and the Department of Defense in selecting bases for closure or realignment under the Act.

138. The GAO was required (a) to assist the Commission in its review and analysis of the Secretary of Defense's closure recommendations and (b) to provide the Commission and the Congress with a detailed analysis of the Secretary of Defense's recommendations and selection process. The GAO Report was also intended to describe how the DOD selection process was conducted and whether it met the requirements of the Act.

139. Despite the clear mandates of the Base Closure Act and the DOD's internal guidelines and regulations, the Navy failed to provide the GAO with sufficient documentation to support either its base closure process or its recommendations for closure.

140. The GAO's independent Report, entitled *Observations on the Analyses Supporting Proposed Closures and Realignments*, was issued on May 16, 1991, in accordance with the statutory mandate of the Base Closure Act. A copy of the relevant text of the GAO Report is annexed hereto as Exhibit A.

141. The GAO Report found that the Army and Air Force could document their use of the force-structure plan and the military value criteria. Therefore, the GAO concluded that the base closure recommendations made by the Army and Air Force were "adequately supported."

142. In stark contrast, the GAO concluded that the Navy's recommendations and processes were entirely inadequate.

143. The GAO Report concluded that the Navy did not offer sufficient documentation to prove whether or not its process followed the force structure and selection criteria, thereby preventing the GAO from evaluating the Navy's specific recommendations for closure:

We were unable to conduct an extensive review of the process the Navy used to recommend bases for closure or realignment, because the Navy did not adequately document its decision-making process or the results of its deliberations. In addition, the Navy did not establish an internal control plan to ensure the validity and accuracy of information used in its assessment as required by OSD.

Due to the limited documentation of its process, we also could not assess the reasonableness of the Navy's recommendations for closures. [GAO Report at p. 46].

144. In addition to the lack of adequate documentation, and the absence of any internal control plan, the GAO determined that it could not evaluate the Navy's "methodology" for reviewing air stations, shipyards, or labs. [GAO Report at pp. 46-48].

145. Significantly, the GAO Report stated that, on May 7, 1991, the Navy's BSC informed the GAO that the BSC had ignored the data prepared by its working groups because of the BSC's view that "much of the data were

biased in favor of keeping bases open and were inadequate for an objective assessment of the Navy's basing needs." According to the BSC, it therefore relied on informal briefings and meetings, many of which were in closed executive sessions. [GAO Report at p. 46].

146. The GAO Report identified three additional deficiencies in the Navy's process for determining base closures: (1) insufficient justification to support "the basis for the [BSC's] military value ratings for Navy installations"; (2) the implementation and use of an inconsistent color coding system to rate military bases; and (3) the Navy's failure to assign responsibility for developing and implementing an internal control plan to ensure the accuracy of information used by the Navy in its base structure reviews. [GAO Report at p. 48].

147. The GAO also discovered that, despite DOD guidance to the contrary, the Navy used budget data which did not use 1991 dollars as its baseline.

148. The GAO discovered inconsistencies in the Navy's service costs, savings estimates, payback calculations and recovery of closure costs. The GAO report concluded that the result of these inconsistencies was an overstatement of estimated annual savings and a shortening of the payback period for several closures.

149. The GAO Report also identified inconsistencies within the BSC's internal rating process, including the fact that the BSC had given identical ratings to two naval bases (Mare Island and Philadelphia Naval Shipyard) on each of the first four military selection criteria, but – without any discernable justification – had arbitrarily assigned an overall rating of green to one (Mare Island) and yellow to the other (Philadelphia Naval Shipyard). [GAO Report at p. 48].

150. Similarly, the BSC had assigned identical ratings to five naval bases but did not treat such bases equally.

Again, the Philadelphia Naval Shipyard was not excluded from the closure process although four other naval shipyards which received identical ratings were excluded from further review.

151. The GAO Report concluded that, since the BSC "did not document these differences," the GAO "could not determine the rationale for its final decisions" and "could not comment on the Committee's closure and realignment recommendations based on the process." [GAO Report at p. 48].

152. In sum, the GAO Report found that the Navy and its BSC:

- (a) Had not treated all bases equally, as required by the Base Closure Act;
- (b) Had not complied with the Secretary of Defense's first four military selection criteria, as required by the Base Closure Act;
- (c) Had not complied with the Secretary of Defense's "record keeping" and "internal controls" requirements; and
- (d) Had prevented the GAO from performing its statutory mandate of reviewing and analyzing the recommendations for Naval base closures made by the Secretary of Defense and transmitting to Congress and the Commission a report containing a detailed analysis of the Secretary of Defense's recommendations for Naval base closures and the Navy selection process.

L. Public Hearings

153. The Base Closure Act established the 1991 Defense Base Closure and Realignment Commission to ensure that "the [base closure] process is open." [Report to President, p. 1-5].

154. The Base Closure Act therefore requires the Commission to conduct its proceedings in public and open its records and deliberations to public scrutiny.

155. The Commission expressly invited and received public testimony in Washington, D.C. from members of Congress.

156. By letter dated April 23, 1991, the Commission established five pages of procedures to govern Congressional testimony at the Commission's hearings. The Commission's procedures provided that:

All members of Congress have the opportunity to testify before the Commission in Washington D.C. Members of Congress will have the opportunity to make introductory comments at regional hearings. However, their formal oral testimony and comments for the record should be presented at the Washington, D.C. hearing.

157. The Commission's official procedures also provided that the "recommended deadline for receipt of written material is May 20 to ensure that the Commission has adequate time to review all written documentation."

158. In accordance with the Base Closure Act, the Commission scheduled and held 28 hearings across the United States.

159. Congressional testimony on the Philadelphia Naval Shipyard was scheduled in Washington, D.C. for May 22, 1991. The regional hearing regarding the Philadelphia Naval Shipyard was scheduled for May 24, 1991.

160. In violation of the Base Closure Act and other applicable law, additional documentation was thereafter provided to the Commission that was not subject to GAO analysis or public comment and debate.

161. In blatant violation of the Base Closure Act, closed meetings with the Navy's BSC were held by the

Commission on May 24, 1991 *after* the public hearings were completed.

162. Moreover, on May 24, 1991—*after* the close of the public hearings—the Commission requested that the Navy's BSC provide it with additional information to "try to resolve missing gaps in the information provided."

163. Thereafter, the Navy's BSC provided additional documents and information to the Commission, including COBRA analyses, data underlying the color coding ratings, data regarding the VCNO study and other information regarding Navy closure recommendations, without affording interested members of Congress or the public a meaningful opportunity to comment on such information at a public hearing.

164. Despite repeated demands by members of Congress for a public hearing on the additional information supplied by the Navy, the Commission refused to allow any public debate.

M. The July 1, 1991 Commission Report To The President

165. On July 1, 1991, the Commission submitted its recommendations for the closure or realignment of U.S. military installations to the President.

166. In its July 1, 1991 Report to the President, the Commission stated:

The Navy presented a special challenge to the Commission. Its selection process was more subjective and less documented than that of either the Army or the Air Force. To determine whether the Navy complied with the law, the Commission's staff held a series of meeting with members of the Navy's Base Structure Commission and other high ranking naval officers

...

* * *

These individuals responded to questions and supplied information to the Commission.

167. The Commission findings with respect to the Philadelphia Naval Shipyard were as follows:

The Commission found that the overall public shipyard workload is falling significantly because of force reductions and budget limitations. The projected workload in nuclear shipyards during the 1990s was found to limit the potential for closing any nuclear shipyard until the late 1990s.

The largest portion of Philadelphia's recent workload has been CV-SLEP, which the Navy desires to terminate. However, Congress has passed legislation that requires a CV-SLEP at Philadelphia. The Commission found that this CV-SLEP should be completed in mid-1996, about a year before the required closure date.

Workload is available that could be diverted from public and private East Coast shipyards to Philadelphia to bring its activity up to levels that justify keeping it open. However, this would limit the Navy's ability to meet its target of putting 30 percent of its repair work in private yards . . .

* * *

The Commission found that the combination of carrier-capable drydocks at Norfolk Naval Shipyard, *Newport News Shipbuilding*, and the mothballed drydocks at Philadelphia provide capacity for unplanned requirements.

168. The Commission exceeded its statutory authority in making base closure recommendations by considering the availability of privately-owned shipyards, such as *Newport News*, to provide emergency service for the Navy's fleet.

169. Consideration of private facilities as part of a force-structure plan to provide emergency service for the Navy's fleet is impermissible under the Base Closure Act and departs from long standing Navy strategic and operational requirements.

170. The Navy was fully aware of the need to keep the Philadelphia Naval Shipyard open, but withheld such information from the GAO, the Commission and the public. The March 1991 Admiral Claman memorandum to the Chief of Naval Operations clearly recognized that:

Closure of Philadelphia Naval Shipyard, without retention of the large carrier capable dry docks creates a shortfall in dry dock capability for emergent dockings of aircraft carriers . . . Without the dry docks available at Philadelphia, the only other dock capable of taking an emergent carrier docking is at *Newport News Shipbuilding* (NNSB). Exhibit C-7 illustrates this situation graphically. This dock is privately owned and its docking schedule is not controlled by the Navy. The cost to have NNSB provide a dedicated dock under contract is considered prohibitive.

171. The Commission adopted the BSC's conclusion that the Shipyard should be closed based upon projected workload trends. However, the Navy's force structure plan lacked sufficient detail for the Commission to evaluate the Secretary's recommendations.

172. The law requires the President to approve or disapprove the Commission's recommendations by July 15, 1991. If approved, the report will be sent to Congress. Unless Congress enacts a joint resolution disapproving the Commission's proposals within 45 legislative days (or prior to when Congress adjourns for the session), the Secretary must begin to close or realign those installations listed in the report.

173. In fact, the Navy failed to produce, and the Commission failed to obtain, detailed information about projected Naval Shipyard workloads.

174. The Navy failed to engage in a fair and objective process and did not treat all military installations equally in recommending the closure of the Shipyard.

175. The Navy deviated substantially from the force structure plan and base closure criteria in recommending the closure of the Shipyard.

176. The Navy failed to base its decision on each of the final selection criteria and failed to apply each of the eight criteria equally, fairly and objectively.

177. The Navy failed to provide *all* information used in making its base closure recommendations to the GAO and members of Congress and failed to consider all available information concerning the Shipyard, especially information which would have prevented the BSC from recommending its closure.

178. The Navy deliberately manipulated data relating to the Philadelphia Naval Shipyard's workload to create a false lack of work or "excess capacity" at the Shipyard. Despite a Congressional mandate that a 24 month SLEP of the USS Kennedy be performed at Philadelphia, the Navy excluded the USS Kennedy from the data that was transmitted to the GAO and the Commission that set forth Philadelphia's projected workload in order to justify closure of the Philadelphia Naval Shipyard.

179. A further example of data manipulation is the workload comparison between Philadelphia and Long Beach. Unlike the Navy's scheduling of the workload for shipyards on the West Coast (Long Beach), on the East Coast, the Navy deliberately refrained from formally assigning a large number of ships and vessels that are to be scheduled for work in Naval shipyards (i.e. Philadelphia), leaving such ships in a "to be determined" category.

180. The Commission's adoption of the DOD's recommended base closures and realignments also violated the procedural and substantive safeguards set forth in the Base Closure Act with respect to other military installations, including its recommendations to close the Philadelphia Naval Station and the realignment and elimination of the Warminster Naval Air Development Center and the U.S. Army Corps of Engineers division and district management headquarters located in the Commonwealth of Pennsylvania.

181. The foregoing actions of the defendants are in bad faith, arbitrary, capricious and in violation of the law.

N. Irreparable Injury

182. On Wednesday, July 10, 1991, the President transmitted to Congress his approval of the Base Closure Commission's list of recommendations for base closure and realignment.

183. On Thursday, July 11, 1991, a joint resolution to disapprove the recommendations of the Base Closure Commission was introduced by Senator Specter in the Senate and referred to its Committee on Armed Services.

184. The Base Closure Act proscribes the Secretary of Defense from carrying out any closure or realignment recommendation until after the expiration of the statutory time period for Congressional approval or disapproval of the joint resolution. [10 U.S.C. § 2094(b)].

185. Flouting the statutory mandates of the Base Closure Act—which were designed to remove from the armed forces discretion that had previously resulted in the indiscriminate closure of military installations—the Navy unlawfully predetermined that it would close the Philadelphia Naval Shipyard and engaged in egregious and deliberate conduct designed to prevent Congressional or judicial interference with such closure.

186. The Navy's plan to prevent Congressional or judicial interference with *its* decision to close the Philadelphia Naval Shipyard included, *inter alia*, a scheme to immediately "starve" the Shipyard to death by removing all of its incoming workload.

187. In April 1991—before the Commission had even commenced its deliberations on the Navy's recommendations—the Navy removed the following ships and vessels from the Philadelphia Naval Shipyard's workload schedule:

<u>Ship</u>	<u>FY</u>	<u>Est. Overhaul</u>	<u>Reassignment</u>
USS SAIPAN (LHA2)	94	11 months	to Norfolk
USS CANOPUS (AS34)	95	4 months	to Charleston
USS SARATOGA (CV 60)	95	12 months	to Norfolk
USS AMERICA (CV 66)	96	24 months	to Norfolk
USS SIMON LAKE (AS33)	97	4 months	to Charleston
USS FORRESTAL (AVT59)	98	11 months	to Norfolk

188. Since Shipyard workers who are employed by the various planning groups typically work on ships and vessels which are not scheduled to arrive at the Shipyard for one to three years, the significance of reassigning the above workload is that Philadelphia will be compelled to immediately begin layoffs of its highly skilled trades people and workers.

189. The above reassignments were made without consideration as to the increase in costs for the newly designated shipyards to overhaul or decommission the ships or whether such shipyards had the necessary drydock space to perform such work, and manifests a clear intent by the Navy to insulate its decision to close the Shipyard from review by Congress or the Courts.

190. In April 1991, the Navy also attempted to officially remove from the Philadelphia Naval Shipyard's workload, the USS KENNEDY (CV67), a 24 month SLEP

expressly authorized by Congress to be performed *in Philadelphia*.

191. On or about July 10, 1991, the Navy requested that the Senate Armed Services Committee deauthorize the 1991 and 1992 appropriations regarding the SLEP of the USS Kennedy.

192. Despite the fact that, prior to the enactment of the Base Closure Act, the Navy consistently maintained the need to perform a "SLEP," not an overhaul, on the USS Kennedy, the Navy now represents to the Senate Armed Services Committee that it only intends to do a complex overhaul on the USS Kennedy in Norfolk, Virginia.

193. The Senate Armed Services Committee, of which Senator Warner of Virginia is the ranking minority member, recommended approval of the deauthorization. Congress has not yet acted on the recommendation.

194. The Navy's imminent intent to make closure of the Philadelphia Naval Shipyard irreversible, and its improper manipulation of data, is further established by the Navy's misconduct with respect to the Navy's award of ship overhaul contracts that are subject to public/private competition under the Competition in Contracting Act.

195. Congress has statutorily recommended that 30% of all overhauls and repairs of ships and vessels be subject to public/private competition to reduce costs to the taxpayer and require efficiencies in the Government. This guideline has historically been adhered to by the armed services.

196. Pursuant to the Competition in Contracting Act, the Navy recently placed five ships up for bid in the public/private sector: USS Sprague, USS Patterson, USS Hailey, USS Rodgers and the USS Daniels.

197. Despite the fact that the Philadelphia Naval Shipyard was the lowest bidder on all but one of the public/

private bid packages, the Shipyard was *not* awarded *any* of these contracts.

198. The Navy, through NAVSEA, engineered this unfair result by arbitrarily imposing unprecedented charges on the Shipyard and creating unjustified and specious deficiencies in the Shipyard's bid proposals.

199. The Navy has also ceased sending information regarding future bids in the public/private competition sector to the Philadelphia Naval Shipyard.

200. For example, the Navy failed to notify the Shipyard of a June 18-19, 1991 AEGIS Fleet Support Review at which current and future shipyard work of AEGIS vessels was discussed and preliminarily planned. The Navy did, however, invite *private* shipyards to that meeting.

201. The foregoing clearly establishes the Navy's determination to prevent *any* work from coming into the Shipyard.

202. On or about July 3, 1991, NAVSEA gave the Commander of the Philadelphia Naval Shipyard Reduction In Force ("RIF") authorization, and the Shipyard began training its personnel in RIF programs to implement the layoffs.

203. Under normal Navy procedure, it does not give RIF authority or training unless a base closure process has already been implemented.

204. At least 1400 layoffs are scheduled during the first half of the next fiscal year with 400 of these layoffs to occur on September 13, 1991.

205. The foregoing conduct of defendants will cause plaintiffs to suffer immediate and irreparable harm.

206. According to the Navy's December 1990 Final Environmental Impact Statement for Base Closure/Re-alignment of the Philadelphia Naval Shipyard ("FEIS"), the direct economic consequence of the proposed closure of the Philadelphia Naval Shipyard includes a reduction in

present Navy employment in the Philadelphia region (which includes areas in the States of Pennsylvania, New Jersey and Delaware) by 88 percent, which represents eliminating directly almost 15,000 employment positions and indirectly causing the loss of an additional 7,384 jobs in the Philadelphia area.

207. The FEIS stated that the proposed closure would add an estimated 16,856 workers to the unemployment rolls (a 17.4 percent increase) and increase unemployment in the geographical region from 3.8 percent (in 1989) to 4.5 percent of the work force.

208. The FEIS also stated that "many employees of Philadelphia Naval Shipyard would experience difficulty reentering the labor force without considerable retraining."

209. According to the FEIS, the closing of the Philadelphia Naval Shipyard will cause a substantial increase in unemployment and a migration of Navy Shipyard employees from New Jersey and Pennsylvania to other states in search of job opportunities along with a consequent decrease in regional and state income and overall tax revenues for these states.

210. According to the FEIS, direct income and expenditures that would be withdrawn from the Philadelphia region as a result of the proposed closure would total \$536.9 million.

211. An Economic Impact Report prepared by the Pennsylvania Economy League ("PEL") and submitted to the Naval Facilities Engineering Command on October 17, 1990 by the Commonwealth of Pennsylvania and the State of New Jersey concluded that closing the Philadelphia Naval Shipyard would have a much greater impact on the economy of Philadelphia and the entire tri-state region than that set forth in the FEIS since the Shipyard is the largest employer in the Philadelphia area.

212. Economic activity connected with the Philadelphia Naval Shipyard accounts for \$2.1 billion in gross product in the Philadelphia metropolitan statistical area. This represent 1.45 percent of the region's total economic activity.

213. The PEL's Economic Impact Report concluded that the unemployment rate would jump 25 percent from 5.8 to 7.6 percent in the Philadelphia region, that the region would suffer a loss of \$915 million in wage and salary income and retail sales would decline \$382.8 million.

214. Plaintiffs do not have an adequate remedy at law.

215. There is presently an actual controversy between the parties, within the meaning of the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

COUNT I

All Plaintiffs

v.

**The Secretary of Defense and
The Secretary of the Navy**

216. Plaintiffs incorporate herein by reference paragraphs 1 through 215 above, as if fully set forth herein.

217. The Secretary of Defense, by and through his agent the Secretary of the Navy, adopted the list of closure and realignment recommendations made by the Navy's BSC in violation of the procedural and substantive safeguards and requirements set forth in the Base Closure Act, in that:

a. They failed to make available to the Commission, the GAO and Congress all information which was used by the Navy in making its recommendations to the Commission, in violation of Section 2903(c)(4) of the Base Closure Act;

b. They failed to provide the GAO with the data necessary for the GAO to perform its statutorily mandated duty to assist the Commission in its review and analysis of the recommendations for base closures made by the Navy and the Secretary of Defense, in violation of Section 2903(d)(5)(A) of the Base Closure Act;

c. They failed to provide the GAO with the data necessary for the GAO to perform its statutorily mandated duty to prepare and transmit to Congress and the Commission a detailed review and analysis of the Navy's and the Secretary of Defense's recommendations for Naval base closures and the procedures employed by the Navy and the Secretary of Defense in arriving at such recommendations, in violation of Section 2903(d)(5)(B) of the Base Closure Act;

d. They failed to publish in the Federal Register and transmit to the congressional defense committees and to the Commission a summary of the selection process that resulted in the recommendation for closure for each installation, together with a justification for each recommendation, in violation of Sections 2903(c)(1) and (2) of the Base Closure Act;

e. They failed to consider all Naval installations inside the United States equally, without regard to whether the installations has been previously considered or proposed for closure or realignment, in violation of Section 2903(c)(3) of the Base Closure Act;

f. They failed to apply the eight final criteria adopted by DOD equally to all Naval installations in making their recommendations for Navy base closures, in violation of Section 2903(c)(1) of the Base Closure Act;

g. They utilized criteria which were not published and adopted in accordance with Section 2903 of the Base Closure Act;

h. They failed to implement record keeping and internal controls promulgated by DOD in order to insure an accurate and fair decision-making process, in violation of the Base Closure Act;

i. They failed to adopt a force structure plan for the Navy in compliance with Section 2903(a) of the Base Closure Act and failed to base their base closure recommendations on a force structure plan which complied with the Base Closure Act; and

j. In order to prevent judicial or legislative interference with their decision to close the Philadelphia Naval Shipyard, the Secretary of the Navy and the Secretary of Defense began diverting the Shipyard's workload and implementing other closure procedures prior to Commission, Presidential and Congressional review of all base closure recommendations.

218. The Secretary of the Navy's and the Secretary of Defense's actions were arbitrary and capricious, not in conformity with law and will inflict substantial irreparable harm on the plaintiffs for which there is no adequate remedy at law.

WHEREFORE, plaintiffs respectfully request that this Court:

a. Find and declare that the list of Naval closure and realignment proposals provided by the Secretary of the Navy and the Secretary of Defense to the Commission on April 12, 1991 was developed in a manner inconsistent with the requirements of the Base Closure Act and is therefore void;

b. Find and declare that the Secretary of the Navy's and the Secretary of Defense's adoption of the list of closure and realignment recommendations, findings and conclusions made by the Navy's BSC was arbitrary and capricious, and otherwise not in conformity with law;

c. Pursuant to 5 U.S.C. § 706(2), hold unlawful and void that portion of the list of closure and realignment proposals, findings and conclusions which were submitted by the Secretary of the Navy;

d. Enjoin the Secretary of Defense and the Secretary of the Navy and their agents and employees from taking any action based upon the list of closure and realignment proposals submitted by the Secretary of the Navy;

e. Require the Secretary of Defense and the Secretary of the Navy to refrain from taking any action that interferes with the Philadelphia Naval Shipyard's ability to operate as if the base was not on the closure list;

f. Require the Secretary of the Navy to reschedule the workload at the Shipyard to reflect the Naval fleet schedule that existed prior to the enactment of the Base Closure Act;

g. Require the Secretary of Defense and the Secretary of the Navy to refrain from taking any action that interferes with making funds available to the Philadelphia Naval Shipyard that have been otherwise authorized for overhaul of the ships and vessels that were scheduled for work in the Shipyard prior to the base closure process;

h. Enjoin the Secretary of the Navy from implementing any layoffs or "reduction in force" plans at the Shipyard pending a full and final hearing on the merits;

i. Enjoin the Secretary of the Navy from acting on its recent award of the bids on the USS Sprague and USS Patterson to private naval shipyards and requiring the Secretary of the Navy to reopen such bids to the public/private competition sector and to award such bid in compliance with the Competition in Contracting Act; and

j. Grant such other and further relief as this Court deems just and equitable.

COUNT II
All Plaintiffs
v.
The Base Closure Commission

219. Plaintiffs incorporate herein by reference paragraphs 1 through 218 above, as if fully set forth herein.

220. The Commission, in reviewing and makings [sic] its recommendations regarding the base closures submitted by the Secretary of the Navy, violated the procedural and substantive safeguards and requirements set forth in the Base Closure Act, in that:

a. It based its decision on a significant amount of substantive information supplied by the Navy which was not evaluated or even made available to the GAO or to Congress, in violation of the Base Closure Act;

b. It failed to ensure that the GAO performed its statutorily mandated duty of assisting the Commission in its review and analysis of the recommendations for base closures made by the Navy and the Secretary of Defense, in violation of Section 2903(d)(5)(A) of the Base Closure Act;

c. It failed to ensure that the GAO performed its statutorily mandated duty of preparing and transmitting to Congress and the Commission a report containing a detailed review and analysis of the Navy's and the Secretary of Defense's recommendations for Naval base closures and the procedures employed by the Navy and the Secretary of Defense in arriving at such recommendations, in violation of Section 2903(d)(5)(B) of the Base Closure Act;

d. It decided to adopt the list of closure and realignment recommendations made by the Navy's BSC even though the GAO had found that the Navy and its BSC: (i) had not treated all bases equally, as required by the Base

Closure Act; (ii) had not complied with the Secretary of Defense's first four military selection criteria, as required by the Base Closure Act; and (iii) had not complied with the Secretary of Defense's "record keeping" and "internal controls" requirements;

e. It failed to hold public hearings, in violation of Section 2903(d)(1) of the Base Closure Act, because it did not include certain pivotal information regarding the Navy's recommendations and selection process in the record until after the close of the public hearings;

f. It failed to consider all Naval installations inside the United States equally, without regard to whether the installations had been previously considered or proposed for closure or realignment, in violation of Section 2903(c)(3) of the Base Closure Act;

g. It failed to apply the eight final criteria adopted by DOD equally to all Naval installations in making its recommendations for Navy base closures, in violation of Section 2903(c)(1) of the Base Closure Act;

h. It utilized criteria which were not published and adopted in accordance with Section 2903 of the Base Closure Act; and

i. It exceeded its statutory authority in making Naval base closure recommendations by considering privately-owned shipyards.

221. The Commission's actions were arbitrary and capricious, not in conformity with law and will inflict substantial irreparable harm on the plaintiffs for which there is no adequate remedy at law.

WHEREFORE, plaintiffs respectfully request that this Court:

a. Find and declare that the Navy's list of closure and realignment recommendations, submitted by the Commission to the President on July 1, 1991, was adopted by the Commission in violation of the Base Closure Act and is therefore void;

b. Find and declare that the Commission's adoption of the list of closure and realignment recommendations, findings and conclusions made by the Navy's BSC was arbitrary and capricious, and otherwise not in conformity with law;

c. Pursuant to 5 U.S.C. § 706(2), hold unlawful and void that portion of the list of closure and realignment recommendations, findings and conclusions which were submitted by the Secretary of the Navy and adopted by the Commission;

d. Enjoin the Secretary of Defense and the Secretary of the Navy and their agents and employees from taking any action based upon the list of closure and realignment proposals submitted by the Secretary of the Navy;

e. Require the Secretary of Defense and the Secretary of the Navy to refrain from taking any action that interferes with the Philadelphia Naval Shipyard's ability to operate as if the base was not on the closure list;

f. Require the Secretary of the Navy to reschedule the workload at the Shipyard to reflect the Naval fleet schedule that existed prior to the enactment of the Base Closure Act;

g. Require the Secretary of Defense and the Secretary of the Navy to refrain from taking any action that interferes with making funds available to the Philadelphia Naval Shipyard that have been otherwise authorized for overhaul of the ships and vessels that were scheduled for work in the Shipyard prior to the base closure process;

h. Enjoin the Secretary of the Navy from implementing any layoffs or "reduction in force" plans at the Shipyard pending a full and final hearing on the merits;

i. Enjoin the Secretary of the Navy from acting on its recent award of the bids on the USS Sprague and USS Patterson to private naval shipyards and requiring the Secretary of the Navy to reopen such bids to the public/private

competition sector and to award such bid in compliance with the Competition in Contracting Act; and

j. Grant such other and further relief as this Court deems just and equitable.

COUNT III

Landry, Reil, IFPTE and MTC
v.
All Defendants

222. Plaintiffs incorporate herein by reference paragraphs 1 through 221 above, as if fully set forth herein.

223. The defendants' actions constitute a violation of the plaintiffs' rights to Due Process as guaranteed under the Fifth Amendment of the United States Constitution.

224. The Base Closure Act expressly entitles the plaintiffs to a "fair process" by which it will be decided which military installations should be closed. Additionally, the Base Closure Act entitles the plaintiffs to have the Philadelphia Naval Shipyard remain open and in operation unless and until it is determined, in accordance with the Base Closure Act, that the closure of the Shipyard is warranted.

225. The defendants' disregard of the procedure set forth in the Base Closure Act, as more fully described in Counts I and II of this Complaint, impermissibly interfered with the rights which were granted to the plaintiffs under the Base Closure Act, and constitute violations of the Due Process Clause of the United States Constitution.

WHEREFORE, plaintiffs respectfully request that this Court:

a. Find and declare that defendants' actions in developing, adopting, and concurring in the Navy's list of closure and realignment recommendations provided by the Commission to the President on July 1, 1991 violated the

plaintiffs' rights guaranteed by the Due Process Clause of the United States Constitution;

b. Pursuant to 5 U.S.C. § 706(2), hold unlawful and void that portion of the list of closure and realignment recommendations, findings and conclusions which were submitted by the Secretary of the Navy and adopted by the Commission;

c. Enjoin the Secretary of Defense and the Secretary of the Navy and their agents and employees from taking any action based upon the list of closure and realignment proposals submitted by the Secretary of the Navy;

d. Require the Secretary of Defense and the Secretary of the Navy to refrain from taking any action that interferes with the Philadelphia Naval Shipyard's ability to operate as if the base was not on the closure list;

e. Require the Secretary of the Navy to reschedule the workload at the Shipyard to reflect the Naval fleet schedule that existed prior to the enactment of the Base Closure Act;

f. Require the Secretary of Defense and the Secretary of the Navy to refrain from taking any action that interferes with making funds available to the Philadelphia Naval Shipyard that have been otherwise authorized for overhaul of the ships and vessels that were scheduled for work in the Shipyard prior to the base closure process;

g. Enjoin the Secretary of the Navy from implementing any layoffs or "reduction in force" plans at the Shipyard pending a full and final hearing on the merits;

h. Enjoin the Secretary of the Navy from acting on its recent award of the bids on the USS Sprague and USS Patterson to private naval shipyards and requiring the Secretary of the Navy to reopen such bids to the public/private competition sector and to award such bid in compliance with the Competition in Contracting Act; and

j. Grant such other and further relief as this Court deems just and equitable.

/s/ Bruce W. Kauffman

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DATED: JULY 19, 1991

VERIFICATION

Congressman Robert E. Andrews, being duly sworn according to law, deposes and says that he is a plaintiff herein, that he has read the foregoing Amended Complaint and that he knows the contents thereof are true and correct of his own knowledge, information and belief.

/s/ Robert E. Andrews

Rep. ROBERT E. ANDREWS

City of Washington
 District of Columbia
 Sworn to and subscribed
 before me this 17th day
 of July, 1991.

/s/ Vernon R. Greene

Notary Public

VERNON R. GREENE

Notary Public, Dist. of Columbia
 Commission Expires April 30, 1995

EXHIBIT A

**UNITED STATES GENERAL ACCOUNTING OFFICE
REPORT TO THE CONGRESS AND THE
CHAIRMAN, DEFENSE BASE CLOSURE
AND REALIGNMENT COMMISSION**

May 1991

MILITARY BASES

**OBSERVATIONS ON THE
ANALYSES SUPPORTING
PROPOSED CLOSURES
AND REALIGNMENTS**

EXECUTIVE SUMMARY

PURPOSE

The Department of Defense (DOD) spends billions of dollars annually operating its military bases in the United States. Events taking place throughout the world and within the United States have caused a reevaluation of our military strategy, and U.S. forces are to be significantly reduced. DOD and the Congress both recognize that with a reduced force structure there is a need to close and realign military installations.

The Defense Base Closure and Realignment Act of 1990 (P.L. 101-510) established a new process for DOD base closure and realignment actions within the United States. The act established an independent Defense Base Closure and Realignment Commission and specified procedures that the President, DOD, GAO, and the Commission must follow, through 1995, in order for bases to be closed or realigned.

This report responds to the act's requirement that GAO provide the Congress and the Commission, by May 15, 1991, an analysis of the Secretary of Defense's April 12, 1991, recommendations of bases for closure and realignment and the selection process used. GAO also received numerous letters, requests, and materials in connection with this review from congressmen, state and local government officials, and private citizens; however, due to the lack of time available to respond to each of the issues raised, GAO has submitted the materials to the Commission for its use.

BACKGROUND

In 1988, the Secretary of Defense chartered the Commission on Base Realignment and Closure to review military installations within the United States for realignment and closure. Later that year the Commission recommended that 145 installations be closed or realigned. The Secretary of Defense and the Congress accepted all the Commission's recommendations.

The Secretary of Defense unilaterally recommended additional closures and realignments on January 29, 1990, as a result of the shrinking defense budget. The Congress subsequently passed the Defense Base Closure and Realignment Act of 1990, which halted any closure actions based on the January 29, 1990, list and required all installations in the United States to be compared equally against (1) criteria to be developed by DOD and (2) the future years' Force Structure Plan (fiscal year 1992 to 1997).

The final eight criteria against which the April 12, 1991, list of proposed military installation closures and realignments was to be measured included four related to the

military value of the installations and four others that addressed the number of years needed to recover the costs of closure and realignment; the economic impact on communities; the ability of both the existing and potential receiving communities' infrastructure to support forces, missions, and personnel; and the environmental impact. DOD guidance provided to the services directed that they give priority to the four criteria that addressed the military value of installations.

RESULTS IN BRIEF

GAO agrees that a reduced military force structure requires that military installations be closed and realigned. The DOD process, when properly implemented, allows for a reduction in the U.S. military base structure by emphasizing the military value of the installations. Indeed, DOD successfully nominated 43 bases for closure and 28 for realignment. This represents a significant start in the process to propose bases for closure and realignment every other year for the next 6 years.

The Army and the Air Force can document the use of DOD's Force Structure Plan and the four military value criteria in the selection process. GAO found some inconsistencies in the way they developed military value rankings for quantifiable attributes used to compare similar installations; however, GAO believes those inconsistencies were not significant. GAO considers the closure and realignment recommendations made by the Army and the Air Force to be adequately supported.

Although the Navy had insufficient documentation to support its efforts, which precluded GAO from evaluating the Navy's process, this does not mean that Navy bases should

not be closed. However, since the Navy did not document the rationale for its decisions, GAO was unable to analyze its specific closure and realignment recommendations. As an alternative means of evaluating the Navy's recommendations, GAO looked at ship berthing capacity in comparison to the Force Structure Plan. After analyzing capacity data, GAO found that the Navy will have significant excess berthing capacity if only the recommended facilities are closed. GAO found that changes have occurred in the strategic homeporting concept, which when combined with excess available pier space for berthing ships, supports the recommendation for fewer Navy bases.

Although recognizing that differences exist in the composition and functions of each service's bases, GAO is concerned that DOD's guidance allowed estimating processes and cost factors used by the services to vary. GAO analyzed the sensitivity of years to recover closing costs (the projected payback period) for each closure or realignment to 50 percent and 100 percent increases in one-time costs. The analysis showed that the payback period for many of the recommendations did not substantially increase. There are several recommended closure and realignment actions, however, where the payback is sensitive to one-time costs.

PRINCIPAL FINDINGS

The Army's Process and Recommendations

The Army established the Total Army Basing Study group in 1990 to develop a total Army basing strategy and then tasked it to recommend potential closures and realignments. The Army used a two-phased approach to evaluate potential bases for closure or realignment that was designed to treat all bases equally. In phase I, it categorized

all its installations by major mission categories and evaluated their military value in quantitative terms. The Army Audit Agency was involved in the process to review and verify data collected for the quantitative analysis. In phase II, the Army used the Force Structure Plan, the phase I results, and the major commands' future plans. It also considered (1) the economic payback for possible alternatives and (2) the socioeconomic and environmental impacts on the communities involved in the final proposed closures.

Because the Army's process was well documented, which enabled GAO to evaluate the process, and the Army Audit Agency provided a check in the process, GAO believes that the resulting recommendations were well supported.

The Air Force's Process and Recommendations

The Air Force process was designed to treat all bases equally, and the selections were based on DOD's criteria and the Force Structure Plan. The process emphasized the first four criteria, which address military value. Also, the judgments of the Secretary of the Air Force and individual members of the Air Force Base Closure Executive Group, which was supported by a working group, were a part of the process.

The Air Force initially identified all Air Force-owned property within the United States and then excluded 35 active component bases from the process after doing a (1) capacity analysis and (2) mission-essential analysis. The 51 remaining active component bases were then rated on the basis of approximately 80 subelements for DOD's eight criteria. The Air Force also considered Reserve Component bases for potential closure or realignment using a

slightly different process. As a result of these assessments, the Secretary of the Air Force then recommended closing 14 bases and realigning 1 base. GAO's analysis focused on the data supporting the closure or realignment decisions. Generally, GAO found that the rationale was adequately supported by documentation.

The Navy's Process and Recommendations

Due to inadequate documentation of the process used by the Navy, GAO was unable to independently evaluate the relative military value of the bases considered. Further, the Navy did not establish required internal controls to ensure the accuracy of the data used.

According to the Navy, it established a Base Structure Committee to conduct its closure process. The Committee decided that the input it received from its working group was biased in favor of keeping bases open. Thus, the Committee based its recommendations on information provided during meetings with various Navy and Marine Corps headquarters officials and representatives from various field organizations.

GAO's review of the Navy's ship berthing capacity studies found that there would be significant excess space beyond what the Committee calculated, even if the bases recommended for closure were included.

COBRA Model Used in Cost Savings Estimates

The revised Cost of Base Realignment Actions (COBRA) model addresses a full range of factors for estimating the costs, savings, and payback period related to closure and realignment actions. GAO found cases where the services used inaccurate data in the model. GAO also found that

the cost estimating process ignored the cost of Medicare to the federal government. However, overall, GAO believes that the recommendations made for base closings and realignments offer an opportunity for substantial savings.

DOD Did Not Ensure Cost Comparability

Without DOD oversight of the COBRA cost estimating process, each service approached common problems in different ways. Although DOD called for submission of cost estimates expressed in fiscal year 1991 dollars, the services used budget data for other than 1991 dollars as their baselines for estimating costs and savings. Service costs and savings estimates, as well as payback calculations, did not consistently rely on fiscal year 1991 input data. These errors could reduce estimated annual savings and lengthen the payback period for several closures.

RECOMMENDATIONS

GAO recommends that the Secretary of Defense

- require the Secretary of the Navy to submit to the Defense Base Closure and Realignment Commission specific details on the manner in which its Base Structure Committee compared bases to develop closure and realignment recommendations and
- ensure the use of consistent procedures and practices among the services in future base closure and realignment reviews.

GAO also recommends that the Chairman, Defense Base Closure and Realignment Commission,

- consider, in evaluating the Navy requirement for bases, the impact of excess space for ship berths on base requirements and

— consider for all the services the effects of incorrect cost and savings estimates on all proposed base closures and realignments, using the results of GAO's sensitivity analysis.

CHAPTER 4

THE NAVY'S BASE CLOSURE AND REALIGNMENT PROCESS AND ASSOCIATED RECOMMENDATIONS

We were unable to conduct an extensive review of the process the Navy used to recommend bases for closure or realignment, because the Navy did not adequately document its decision-making process or the results of its deliberations. In addition, the Navy did not establish an internal control plan to ensure the validity and accuracy of information used in its assessment as required by OSD.

Due to the limited documentation of its process, we also could not assess the reasonableness of the Navy's recommendations for closures. However, we reviewed and recalculated the Navy's ship berthing capacity analysis and found that excess capacity would remain, even with the closure of recommended bases.

THE NAVY'S PROCESS AS DESCRIBED BY NAVY OFFICIALS

The Navy's Base Structure Committee, which was charged with making base closure and realignment recommendations, began its review of the Navy's basing structure in late January 1991. However, the Committee did not fully explain its process to us until May 7, 1991, when it informed us that after review of data prepared by its working group, the Base Structure Committee decided that much of the data were biased in favor of keeping bases open and were inadequate for an objective assessment of the Navy's basing needs. Its review, therefore, emphasized a series of briefings and meetings attended by Committee members, Navy and Marine Corps headquarters officials, and representatives of field activities. According to Committee members, decisions made during the process were

sometimes made in the presence of everyone in the meetings and were clear to everyone in attendance. In other cases, the decisions were made by the Committee in closed executive sessions. Based on this review, the Committee proposed closure and realignment actions to the Secretary of the Navy on March 21, 1991.

We reviewed the charts that were used in the presentations to the Committee. These charts were generally in outline form. Our review of this information showed that presentations were organized by 23 Navy and 6 Marine Corps categories representing the various Navy functions and missions. For example, the category "naval stations" included bases that have deep water harbors and piers and serve as home bases for Navy surface ships and aircraft carriers. The category "naval air stations" included bases that have runways and hangars and serve as home bases for aircraft. Other categories included submarine bases, shipyards, aviation depots, supply centers/depots, Marine Corps bases, Marine Corps air stations, reserve centers, and RDT&E activities.

The Base Structure Committee told us that a capacity analysis was then discussed for each functional category, which compared the 1997 force structure facility requirements against the existing inventory. Critical factors were identified for each category and served as units of measure for capacity. For example, pier space was used as the primary unit of measure for naval stations, and airfield apron and hangar space were used for naval air stations.

Of the eight categories of bases the Committee retained for further closure and realignment analysis, four were retained because the Base Structure Committee identified

potential excess capacity: (1) naval stations, (2) naval air stations, (3) shipyards, and (4) Marine Corps air stations. Two other categories—the training and construction battalion centers categories—were retained for further analysis, because they showed potential excess capacity in segments of the overall categories. The medical category was also retained because of the link between medical facilities and major installations that were being evaluated for closure or realignment. Finally, the RDT&E category was retained for analysis based on a mandated requirement to reduce personnel by 20 percent.

A military value rating was then assigned by the Base Structure Committee to each base in all the categories being analyzed except for the medical category.¹ Committee members told us that they rated each installation using the first four DOD selection criteria, which addressed military value, and then they independently assigned each installation an overall color-coded rating.

Bases receiving an overall green rating were excluded from further study, according to Committee members. For example, in the naval stations category the bases receiving an overall green were Coronado, Guam, Ingleside, Little Creek, Mayport, Mobile, New York (Staten Island), Norfolk, Pascagoula, Pearl Harbor, Puget Sound/Everett, and San Diego. The Committee continued to evaluate bases that were given an overall rating of yellow or red. Additional bases were excluded from further review because of their unique assets, geographic location, strategic

¹ Three hospitals were reviewed because three installations with hospitals were being considered for closure: Orlando Naval Training Center, Whidbey Island Naval Air Station, and Long Beach Naval Station.

importance, or operational value, leaving 19 bases and the RDT&E category to be evaluated for closure.

Committee members told us they then performed a “quick estimate” cost-benefit analysis of each of the remaining bases to determine the feasibility of closing them. After making its final decisions, a full COBRA analysis for those closure candidates was conducted. Local economic and environmental impact analyses were also done for the closure candidates.

The Committee proposed closing 11 bases and 10 RDT&E facilities. It also recommended that 1 base and 16 RDT&E facilities be realigned. In addition, three hospitals were proposed to be closed as a result of the Committee’s decisions.

GAO’s VIEWS ON THE NAVY’s PROCESS

In addition to the limitations placed on our review by the lack of adequate documentation, we identified three problems with the Navy’s process. First, due to the lack of supporting documentation, we could not determine the basis for the Committee’s military value ratings for Navy installations. In late March, we received selected data given to the Committee by its Working Group. This information was provided to us, but we were not advised until May 7, 1991, that the Committee had decided that much of this data were biased in favor of keeping bases open. In mid-April, the Base Structure Committee provided us with four additional volumes of material that consisted primarily of briefing charts that were basically outlines of matters and data to be discussed, without any explanation or supporting data. Also, Committee members said they did not prepare minutes of their deliberations.

Second, we identified apparent inconsistencies within the Committee's internal rating process. For example, the Committee had given identical ratings to two naval stations on each of the first four DOD selection criteria but had assigned an overall rating of green to one and yellow to the other. Similarly, the Committee had assigned identical ratings to six naval air stations for the first four DOD selection criteria. Four bases were assigned an overall rating of yellow and two an overall rating of green. These inconsistencies are significant because any base given an overall rating of green, based on the first four DOD selection criteria, was excluded from further closure or realignment consideration. In explanation, Committee members stated that "not all yellows are equal" and "not all greens are equal." Since the Committee did not document these differences, we could not determine the rationale for its final decisions.

Lastly, although required by OSD policy guidance to develop and implement an internal control plan for its base structure reviews, the Navy did not assign responsibility for developing and implementing such a plan.

GAO's VIEWS ON THE CLOSURE AND REALIGNMENT RECOMMENDATIONS

Because the Committee did not document the rationale for its decisions, we could not comment on the Committee's closure and realignment recommendations based on the process. As an alternative, we looked at ship berthing capacity of naval stations in comparison to the Force Structure Plan because naval stations are a major category of the Navy's facilities. Also, we have conducted prior work and have ongoing work related to homeporting needs. Data obtained from the Navy's Assistant Chief of

Naval Operations (Surface Warfare) showed that the most appropriate indicator for naval station requirements is ship berthing capacity. An analysis of the capacity data showed the Navy will have excess capacity remaining if only the four recommended naval stations are closed.

The Navy's capacity analysis indicates an inventory of 257.6 thousand feet of berthing (KFB) at naval stations and a requirement of 174.2 KFB, leaving an excess of 83.4 KFB. This excess represents the capacity at naval stations worldwide and also includes some inadequate berthing space. In addition, 14.5 KFB of berthing space is available at facilities other than naval stations.

When we subtracted the 75.2 KFB identified with space associated with (1) overseas facilities, (2) recommended closures, and (3) inadequate berthing facilities, 22.7 KFB of excess berthing capacity remains (see table 4.1).

CERTIFICATE OF SERVICE

I, Camille J. Wolf hereby certify that on this 19th day of July 1991, I caused a true and correct copy of plaintiffs' Verified Amended Complaint to be hand delivered on the following counsel of record: Michael M. Bayson, Esquire, the United States Attorney for the Eastern District of Pennsylvania, David F. McComb, Assistant United States Attorney for the Eastern District of Pennsylvania, 3310 U.S. Courthouse, Independence Mall West, 601 Market Street, Philadelphia, Pennsylvania, 19106.

/s/ Camille J. Wolf
 CAMILLE J. WOLF

Supreme Court of the United States

No. 93-289

JOHN H. DALTON, SECRETARY OF
 THE NAVY, ET AL., PETITIONERS

v.

ARLEN SPECTER, ET AL.

ORDER ALLOWING CERTIORARI:
Filed October 18, 1993.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted.

October 18, 1993